

Chia Kim Huay (litigation representative of the estate of Chua Chye Hee, deceased) v Saw
Shu Mawa Min Min and another
[2012] SGHC 172

Case Number : Suit No 704 of 2010/V (Summons No 5809 of 2011/Z and Summons No 135 of 2012/Q)
Decision Date : 27 August 2012
Tribunal/Court : High Court
Coram : Chan Seng Onn J
Counsel Name(s) : Paul Yap Tai San (Vision Law LLC) for the plaintiff; Niru Pillai (Global Law Alliance LLC) for the first and second defendants.
Parties : Chia Kim Huay (litigation representative of the estate of Chua Chye Hee, deceased) — Saw Shu Mawa Min Min and another

Civil procedure – offer to settle

Civil procedure – service

Contract – formation – acceptance

Contract – offer – termination

27 August 2012

Chan Seng Onn J:

Introduction

1 The purpose of the offer to settle mechanism prescribed under Order 22A of the Rules of Court (Cap 322, R 5, 2006 Rev Ed), which is derived from rule 49 of the Rules of Civil Procedure, Ontario RRO 1990, Reg 194, is to “encourage termination of litigation by the agreement of the parties — more speedily and less expensively than by judgment of the court at the end of the trial”: *per* Morden ACJO in *Data General (Canada) Ltd v Molnar Systems Group* (1991) 85 DLR (4th) 392 at 398. Ironically, it was the construction of an offer to settle under Order 22A that lay at the heart of the dispute in the present matter.

2 This matter raises the interesting question of whether and, if so, to what extent, do ordinary contractual principles of offer and acceptance apply to the statutory regime of offers to settle under Order 22A. The theoretical answer to the question must be that ordinary contractual principles apply to the extent that they are not inconsistent with what the Rules of Court expressly provide. However, as will be seen in the present case, the application of theory to practice is not as straightforward as it seems.

The facts

Background

3 On 15 April 2009, Chua Chye Hee (“the Plaintiff”) was involved in a motor accident with Saw

Shu Mawa Min Min ("the 1st Defendant"). As a result of the accident, the Plaintiff was rendered tetraplegic. At the material time of the accident, the First Defendant was an employee of GEA Westfalia Separator (SEA) Pte Ltd ("the 2nd Defendant").

4 On 15 September 2010, the Plaintiff commenced Suit No 704 of 2010 against both the 1st and 2nd Defendants, with liability and damages to be determined in two separate tranches. On 10 February 2011, interlocutory judgment on the issue of liability was entered by consent against the 1st and 2nd Defendants for 100%, with the Plaintiff's damages to be assessed and with interest and costs reserved.

5 After determining the issue of liability, the 2nd Defendant's insurer, Allianz Global Corporate and Specialty AG, Singapore Branch stepped in to defend the suit on behalf of the 1st and 2nd Defendants. For convenience, I shall refer to the insurer as "the Defendant", since it was the party who made the relevant offer to settle to the Plaintiff in this suit.

The Defendant's first offer to settle

6 On 9 March 2011, the Defendant made an offer to settle under Order 22A to the Plaintiff at \$352,316.08, representing the estimated loss of the Plaintiff's earnings calculated based on a 3 year multiplier.

The Plaintiff's first offer to settle

7 On 21 March 2011, the Plaintiff made an offer to settle under Order 22A to the Defendant at the sum of \$594,954.60, representing the estimated loss of his earnings calculated based on a higher multiplier of 5.75 years. The Plaintiff also gave the Defendant full access to his medical records. On 3 May 2011, the Defendant's medical expert conducted an independent examination of the Plaintiff.

The Defendant's second offer to settle

8 On 17 June 2011, based on the medical examination and their first offer to settle, the Defendant made a second offer to settle under Order 22A to the Plaintiff at \$435,000.00. The Defendant wrote a letter to the Plaintiff in Form 33, stating:

OFFER TO SETTLE

The Defendants offer to settle the proceedings under Order 22A by paying the Plaintiff the following:

1. The sum of **S\$435,000.00** as damages and interests.
2. Costs of the action and reasonable disbursements to be agreed or otherwise taxed.

Dated this 17th day of June 2011

[Signed]

9 The figure of \$435,000.00 is an intermediate figure between the Defendant's first offer to settle

at \$352,316.08; and the Plaintiff's first offer to settle at \$594,954.60. Attached to this second offer to settle is another letter which set out the following table:

Item	Plaintiff's quantification of 2.9.10	Plaintiff's quantification of 21.3.11	Our clients' quantification
Pain and suffering	S\$280,000.00	S\$225,000.00	S\$180,000.00
Future medical expenses	S\$30,000.00	S\$30,000.00	S\$30,000.00
Future employment of maid	S\$48,960.00 (\$510 X 12 mths X 8 yrs)	S\$48,300.00 (\$700 X 12 mths X 5.75 yrs)	S\$35,190.00 (\$510 X 12 mths X 3 yrs)
Future costs of diapers/pads	S\$20,263.67 (\$211.08 X 12 mths X 8 yrs)	S\$14,564.52 (\$211.08 X 12 mths X 5.75 yrs)	S\$14,564.52 (\$211.08 X 12 mths X 5.75 yrs)
Costs of future additional utility	S\$13,498.56 (\$140.61 X 12 mths X 8 yrs)	S\$9,702.09 (\$140.61 X 12 mths X 5.75 yrs)	S\$9,702.09 (\$140.61 X 12 mths X 5.75 yrs)
Costs of future medical equipment	S\$15,000.00	S\$48,300.00 (\$700 X 12 mths X 5.75 yrs)	S\$15,000.00
Future transport expenses	S\$5,000.00	S\$12,000.00	S\$5,000.00
Loss of future earnings	S\$188,488.00 (\$23,561 X 8 yrs)	S\$135,475.75 (\$23,561 X 5.75 yrs)	S\$70,683.00 (\$23,561 X 3 yrs)
Medical expenses	S\$22,741.82	S\$22,741.82	S\$22,741.82
Transport expenses	S\$3,000.00	S\$3,000.00	S\$3,000.00
Costs of employing maid	S\$7,650.00	S\$7,650.00	S\$7,650.00
Cost of diapers/pads	S\$2,533.00	S\$2,533.00	S\$2,533.00
Additional utility expenses	S\$1,687.32	S\$1,687.32	S\$1,687.32
Loss of earnings	Not stated	S\$34,000.00 (17 mths X \$2,000)	S\$33,505.58 (17 mths X \$1,970.92)
Cost of repairs	Reserved	Reserved	–
Loss of use	Reserved	Reserved	–

10 The dispute in the present case is whether or not this second offer to settle from the Defendant dated 17 June 2011 ("the Defendant's second offer to settle") had been validly accepted

by the Plaintiff.

The Plaintiff's second offer to settle

11 On 23 August 2011, the Plaintiff made a second offer to settle to the Defendant at \$600,000, inclusive of all interim payments. However, the Defendant did not accept this offer to settle and nothing in this case turns on this second offer to settle made by the Plaintiff.

12 In summary, the Plaintiff and the Defendant each made two offers to settle pursuant to Order 22A. However, as will be seen, this case turns solely upon whether the Defendant's second offer to settle was validly accepted.

The Plaintiff's 1st and 2nd Acceptances

13 On 27 August 2011, which was a Saturday, the Plaintiff's counsel accepted the Defendant's second offer to settle via two modes:

- (a) by sending a facsimile in Form 35 at 6.26 pm to the Defendant's counsel, ("the 1st Acceptance"); and
- (b) by personally posting an acceptance in Form 35 to the address of the Defendant's counsel at about 6.45 pm ("the 2nd Acceptance"). [\[note: 1\]](#)

14 The 1st and 2nd Acceptances were similarly worded:

PLAINTIFF'S ACCEPTANCE OF DEFENDANTS' OFFER TO SETTLE

The Plaintiff accepts the Defendants' Offer to Settle dated the 17th day of June 2011 on the terms stated therein.

Dated this 27th August 2011

[Signed]

15 Mr Chua Chean Veen, the Senior Executive Claims of the Defendant, stated in his affidavit that he was advised by his counsel that:

- (a) the 1st Acceptance was received by facsimile on Monday, 29 August 2011; and
- (b) the 2nd Acceptance was received by post on Wednesday, 31 August 2011. [\[note: 2\]](#)

16 The parties seemed to dispute the exact timing when the Defendant's counsel received the 2nd Acceptance. I note that the Plaintiff produced a copy of the 2nd Acceptance with a stamp at the bottom right hand corner which stated:

This document served on us at **2.09 pm** on **31/8/11**.

17 As the authenticity of this document or the stamp therein was not disputed, I therefore found that the earliest time that Defendant's counsel had been physically served the 2nd Acceptance was 2.09 pm on 31 August 2011.

Death of the Plaintiff

18 At 11.06 am on 29 August 2011, the Plaintiff passed away. Although the Plaintiff's counsel had posted the 2nd Acceptance two days **prior** to the Plaintiff's death, the 2nd Acceptance was however received by the Defendant's counsel two days **after** the Plaintiff's death.

The 3rd Acceptance

19 After the Plaintiff passed away, both the Plaintiff's and the Defendant's counsel wrote to each other disputing whether or not the Plaintiff had validly accepted the Defendant's second offer to settle *via* either the 1st Acceptance or the 2nd Acceptance. In the meantime, the Defendant's counsel did not withdraw the Defendant's second offer to settle.

20 On 8 December 2011, on the instructions of Chia Kim Huay, the litigation representative of the estate of the Plaintiff (hereinafter also referred to as the "Plaintiff" where the context applies), the Plaintiff's counsel served another acceptance in Form 35 ("the 3rd Acceptance") on the Defendant's counsel accepting the Defendant's second offer to settle, which the Defendant's counsel took no steps to withdraw despite knowing full well that the Plaintiff had already passed away more than three months ago. The service and receipt of the 3rd Acceptance was not disputed. The Defendant's second offer to settle was finally withdrawn by Defendant's counsel on 13 January 2012 using Form 34.

The Plaintiff's Summons No 5809 of 2011

21 On 23 December 2011, the Plaintiff filed Summons No 5809 of 2011 praying for judgment to be entered for the Plaintiff on the terms of the Defendant's second offer to settle, which the Plaintiff contended had been validly accepted. In response, the Defendant filed Summons No 135 of 2012 on 10 January 2012 seeking the following declaratory relief:

- (a) a declaration that the Defendant's second offer to settle was not validly accepted by the Plaintiff before he passed away on 29 August 2011; and
- (b) a declaration that the Defendant's second offer to settle had determined on the death of the Plaintiff on 29 August 2011 and was thereafter no longer capable of being accepted.

22 I heard the both counsel on 26 March 2012 and granted the prayers of the Plaintiff in Summons No 5809 of 2011 and dismissed Summons No 135 of 2012. I ordered the Defendant to pay:

- (a) general damages of \$360,139.61;

- (b) special damages of \$71,117.71;
- (c) pre-judgment interest of \$3,742.67; and
- (d) costs and reasonable disbursements of both Summonses to be fixed at \$2,500 with the usual consequential orders to follow.

23 After making the above order, the Defendant's counsel wrote in to request for further arguments to be made. After considering the further arguments, I confirm my decision and I shall now give the grounds for my decision.

The legal issue

24 The only legal issue in the present case before me is simply which, if any, of the three acceptances made by the Plaintiff are valid? As long as the Plaintiff can successfully show that at least one acceptance has been validly served and received while the Defendant's second offer to settle is still valid, the Defendant's second offer to settle must have been validly accepted.

The applicable law

25 Before going into the specifics of the Order 22A mechanism, it is important to appreciate the rationale behind the relevant rules. The Court of Appeal cautioned in *The "Endurance 1"* [1998] 3 SLR(R) 970 at [39] that:

39 It appears to us from that part of the learned judge's grounds of judgment we have set out in [37] above that the learned judge applied the rule literally without the exercise of any discretion or making an inquiry into the rationale and policy of the rule.

26 The Court of Appeal went on to explain the rationale of Order 22A in *The "Endurance 1"* [1998] 3 SLR(R) 970 at [41]:

41 In the Ontario Court of Appeal in *Data General (Canada) Ltd v Molnar Systems Group Inc* (1991) 85 DLR (4th) 392, Morden ACJO identified the rationale behind r 49 of their Rules of Civil Procedure. He said at 398-399:

As far as the dictionary meaning of 'settle' is concerned, while it may commonly be the case that when a party 'settles' a proceeding the settlement will involve some element of compromise, on one side or both. I do not think that 'settle' necessarily requires a compromise. *The word means to bring a dispute to an end by arrangement of the parties as opposed to by judgment of a court on the merits ...*

The purpose of r 49 is to encourage the termination of litigation by agreement of the parties – more speedily and less expensively than by judgment of the court at the end of the trial. *The impetus to settle is a mechanism which enables a plaintiff to make a serious offer respecting his or her estimate of the value of the claim which will require the defendant to give early (that is, when the offer is served) and careful consideration of the merits of the case. ...*

[emphasis in the original]

27 In my opinion, the above rationale must be kept in mind in considering to what extent ordinary

principles of contract law (*ie* rules of offer and acceptance, the postal acceptance rule etc.) are applicable to the offer to settle regime under Order 22A of the Rules of Court. This will in turn help resolve the legal issues in the present case.

Overview of Order 22A

28 The very title “offer to settle” and the language of Order 22A suggest that Order 22A cannot be understood in a vacuum without reference to ordinary principles of contract law such as concepts of offer and acceptance. However, being a statutory mechanism, Order 22A modifies the ordinary rules of contract law and imposes certain statutory restrictions, including formality requirements, on the parties should they choose to invoke Order 22A. I shall first examine the areas in which the offer to settle mechanism under Order 22A departs from the ordinary rules of contract at common law.

29 Parties to a lawsuit often make offers to each other in order to try to settle the lawsuit out of court. Such an offer, however, is not an “offer to settle” within the meaning of Order 22A. Order 22A is a statutory mechanism which requires parties to specifically invoke through the use of certain prescribed forms.

30 The Order 22A mechanism, once invoked, has several consequences, the most important one being the cost consequences set out in Order 22A rule 9. The Court of Appeal explained the cost consequences of Order 22A in *Singapore Airlines Ltd v Tan Shwu Leng* [2001] 3 SLR(R) 439 at [38]:

38 The scheme of things under O 22A is verily to encourage the plaintiffs to be realistic in their assessment of what they are entitled to and on the part of the defendants, to make reasonable offers, *on pain of having to bear the costs on the indemnity basis if they should persist in their exaggerated claims or maintain their unreasonable position* (in respect of an offer from the plaintiff). *The order seeks to promote responsible conduct on the part of both parties. It discourages obstinacy.* The wide discretion given to the court in r 12 is to enable the court to take all pertinent facts and circumstances into account and arrive at an order on costs which is fair and just.

[emphasis added]

31 Once Order 22A is invoked, the common law rules of offer and acceptance are statutorily modified. For example, while the party making the offer remains free to stipulate the terms of the settlement under Order 22A rule 1, the party making the offer cannot withdraw the offer at any time. The party making the offer must keep the offer to settle open for not less than 14 days pursuant to Order 22A rule 3(1):

3. Time for acceptance and withdrawal (O. 22A, r. 3)

(1) ***An offer to settle shall be open for acceptance for a period of not less than 14 days after it is served.*** If an offer to settle is made less than 14 days before the hearing of the matter, it shall remain open for a period of not less than 14 days unless in the meanwhile the matter is disposed of.

(2) Subject to paragraph (1), an offer to settle which is expressed to be limited as to the time within which it is open for acceptance shall not be withdrawn within that time without the leave of the Court. ***An offer to settle which does not specify a time for acceptance may be withdrawn at any time after the expiry of 14 days from the date of service of the offer on the other party provided that at least one day’s prior notice of the intention to withdraw***

the offer is given.

(3) The notice of withdrawal of the offer shall be in Form 34.

(4) Where an offer to settle specifies a time within which it may be accepted and it is not accepted or withdrawn within that time, it shall be deemed to have been withdrawn when the time expires.

(5) Where an offer to settle does not specify a time for acceptance, it may be accepted at any time before the Court disposes of the matter in respect of which it is made.

[emphasis added in bold italics]

32 Order 22A rule 3(2) mandates that the offer to settle which does not specify a time for acceptance may only be withdrawn after 14 days by giving at least one day's prior notice of the intention to withdraw. Order 22A rule 3(3) requires the notice of withdrawal to be in Form 34. This means that after the party making the offer gives notice to withdraw the offer in Form 34, the party who received the offer still has one day to accept the offer before it is withdrawn.

33 Furthermore, under Order 22A rule 6(2), an offer to settle remains open for acceptance until it is withdrawn or when the court disposes of the matter in respect of which it was made, notwithstanding that it has been previously rejected or the other party has responded with a counter-offer:

6. Manner of acceptance (O. 22A, r. 6)

(1) An offer to settle shall be accepted by serving an acceptance of offer in Form 35 on the party who made the offer.

(2) Where a party to whom an offer to settle is made rejects the offer or responds with a counter-offer that is not accepted, the party may thereafter accept the original offer to settle, unless it has been withdrawn or the Court has disposed of the matter in respect of which it was made.

(3) Where an offer is accepted, the Court may incorporate any of its terms into a judgment.

34 This marks another departure from the common law - *ie*, where a counter-offer is treated as a rejection of the earlier offer such that the earlier rejected offer cannot be subsequently accepted. Order 22A rule 6(1) requires an offer to settle to be accepted by serving an acceptance of offer in Form 35 on the party who made the offer.

35 With the rationale of Order 22A and the differences between Order 22A and the common law in mind, I now turn to consider the issue as to whether any of the acceptances were valid.

The 1st Acceptance

36 The Defendant's counsel submitted that (i) the 1st Acceptance was not valid because it was sent by facsimile; and (ii) it was clear on his firm's letterhead that his firm did not accept service of court documents by facsimile. Order 22A rule 6(1) states that:

6. Manner of acceptance (O. 22A, r. 6)

(1) An offer to settle shall be accepted by **serving** an acceptance of offer in Form 35 on the party who made the offer.

[emphasis added in bold italics]

37 Order 62 rule 6 sets out the manner of effecting ordinary service when the rules so require. The relevant paragraphs of Order 62 rule 6 which were applicable on 27 August 2011 state:

Ordinary service: How effected (O. 62, r. 6)

6. —(1) Service of any document, not being a document which by virtue of any provision of these Rules is required to be served personally, may be effected —

- (a) by leaving the document at the proper address of the person to be served;
- (b) by post;
- (c) **by FAX in accordance with paragraph (3) ;**
- (d) **in such other manner as may be agreed between the party serving and the party to be served ;** or
- (e) in such other manner as the Court may direct.

...

(3) Service by FAX may be effected where —

- (a) the party serving the document acts by a solicitor;
- (b) the party on whom the document is served acts by a solicitor and service is effected by transmission to the business address of such a solicitor;
- (c) the solicitor acting for the party on whom the document is served has indicated in writing to the solicitor serving the document that he is willing to accept service by FAX at a specified FAX number and the document is transmitted to that number; and for this purpose **the inscription of a FAX number on the writing paper of a solicitor shall be deemed to indicate that such a solicitor is willing to accept service by FAX at that number in accordance with this paragraph unless he states otherwise in writing ;** and
- (d) within 3 days after the day of service by FAX the solicitor acting for the party serving the document serves a copy of it on the solicitor acting for the other party by any of the other methods of service set out in paragraph (1), and if he fails to do so, the document shall be deemed never to have been served by FAX.

...

(5) Nothing in this Rule shall be taken as prohibiting the personal service of any document or as affecting any written law which provides for the manner in which documents may be served on bodies corporate.

[emphasis added in bold italics]

38 The letterhead of the law firm of the Defendant's counsel contains the following text enclosed in a box near the bottom of the page and is used on all letters sent out by the firm:

Service of court documents by facsimile is not accepted.

39 I accept the submissions of the Defendant's counsel that the 1st Acceptance by facsimile on 27 August 2011 was clearly not in compliance with Order 62 rule 6(1)(c). There is no evidence to show that the party serving and the party to be served had agreed on other modes of service pursuant to Order 62 rule 6(1)(d). Therefore, I find that the 1st Acceptance was not valid.

The 2nd Acceptance

40 The 2nd Acceptance was posted on 27 August 2011. The Plaintiff passed away on 29 August 2011, and the 2nd Acceptance was received only on 31 August 2011. Whether or not the 2nd Acceptance was valid depends on:

- (a) whether the postal acceptance rule applies to Order 22A; and
- (b) whether the Plaintiff's death caused the offer to determine on 29 August 2011.

41 The Plaintiff's counsel submitted that the 2nd Acceptance was valid because the postal acceptance rule operated to deem the acceptance to have been served on the Defendant on 27 August 2011, before the Plaintiff passed away. Further or in the alternative, the Plaintiff's counsel submitted that the Defendant's second offer to settle did not determine upon the Plaintiff's death and was subsequently validly accepted on 31 August 2011. He argued that there was no scope within Order 22A for implying terms that were not stated in the Defendant's second offer to settle itself. The Defendant could have framed the terms of the offer to settle in any way it wished, but it chose not to specify the condition that the offer is deemed withdrawn upon the Plaintiff's death. The Defendant was fully informed of the medical condition of the Plaintiff. By choosing the statutory mechanism under Order 22A which required a notice period of one day before the offer can be withdrawn, the Defendant knowingly ran the risk of the Plaintiff passing away before it could withdraw the offer.

42 The Defendant's counsel submitted that the postal acceptance rule does not apply to service of court documents. He also submitted that the 2nd Acceptance was not valid because the Defendant's second offer to settle had determined immediately upon the Plaintiff's death and could not be accepted after the Plaintiff died on 29 August 2011.

The Postal Acceptance Rule

43 The postal acceptance rule is explained in *The Law of Contract in Singapore* (Andrew Phang Boon Leong gen ed) (Academy Publishing, 2012) at p 133:

- (E) "POSTAL ACCEPTANCE RULE"

A more clearly defined exception (compared to the broader approach utilised by Lord Wilberforce in *Brinkibon Ltd v Stahag Stahl und Stahlwaren Handelsgesellschaft GmbH* [1983] 2 AC 34 as quoted above) is popularly referred to as the "postal acceptance rule". ***This rule is an exception to the general rule: in other words, acceptance does not need to be communicated to the***

offeror in order for there to be a binding contract. Instead, acceptance takes place at the point of posting of the letter of acceptance itself. ... The “postal acceptance rule” has in fact been endorsed in the *Singapore* context in the early decision of the Straits Settlements Supreme Court in *Lee Seng Heng v The Guardian Assurance Co Ltd* [1932] SSLR 110. ... ***Firstly, the rule only applies to situations where postal acceptance is either expressly or impliedly authorised*** — for instance by reason of the terms in which the offer is made *or* by reason of the specific relations between the parties themselves *or* because of general usage (and see the English Court of Appeal decision of *Household Fire and Carriage Accident Insurance Co v Grant* (1879) 4 Ex D 216 at 227-228, *per* Beggallay LJ). ***Secondly ... it would appear that the letter of acceptance must also have been properly stamped and addressed***. An important point should be noted at the outset: ***the “postal acceptance rule” is effective even if the letter of acceptance is lost in the post.***

[emphasis in original in italics; emphasis added in bold italics]

44 I am not persuaded that the postal acceptance rule applies to accepting an offer to settle under Order 22A. Order 22A rule 6(1) requires an offer to be accepted by “serving” an acceptance of offer in Form 35 on the party who made the offer (see [36] above). This formality requirement goes beyond the common law requirement of communicating the acceptance to the offeror. The offeror must be *served* the acceptance in Form 35, and “service” of documents is dealt with specifically under Order 62 of the Rules of Court. The Rules of Court clearly override the common law rules of acceptance of offers in the event of any inconsistency.

45 Order 62 rule 6(1)(b) allows service of any document to be effected by post. Section 2(5) of the Interpretation Act (Cap 1, 2002 Rev Ed) sets out the requirements that must be met before the service by post can be deemed to be effected:

(5) Where an Act authorises or requires any document to be served by post, whether the word “serve”, “give” or “send” or any other word is used, then, unless a contrary intention appears, *the service shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the document*, and, unless the contrary is proved, *shall be deemed to have been effected at the time at which the letter would be delivered in the ordinary course of post.*

[emphasis added]

46 In the context of service of documents, section 2(5) of the Interpretation Act modifies the postal acceptance rule at common law. While the postal acceptance rule deems an acceptance sent by post to be effective at the point of posting the letter of acceptance, section 2(5) of the Interpretation Act deems service to be effected only:

- (a) by properly addressing, prepaying and posting a letter containing the document; and
- (b) at the time at which the letter would be delivered in the ordinary course of post.

47 I therefore hold that the postal acceptance rule has no application in the context of service of documents by post, as the common law rule has been statutorily modified by section 2(5) of the Interpretation Act. I accordingly reject the Plaintiff’s counsel submission that the postal acceptance rule applies and the acceptance should be deemed validly made when it was posted by the Plaintiff on 27 August 2011. In the absence of submissions to the effect that the 2nd Acceptance should be deemed to have been served at a date earlier than the date of actual receipt (*ie* 31 August 2011) under section 2(5) of the Interpretation Act, I find that the 2nd Acceptance took effect only when it

was actually delivered to and received by the Defendant on 31 August 2011 and not any earlier.

The effect of death

48 This case therefore turned on whether or not the Defendant's second offer to settle determined on the Plaintiff's death. If it did not, then it would not matter that the 2nd Acceptance took effect only on 31 August 2011. The submissions of the Defendant's counsel appeared to rest on the assumption that the Defendant's second offer to settle automatically determined upon the Plaintiff's death.

49 The Plaintiff's counsel, on the other hand, submitted that the Defendant's second offer to settle remained valid until it was withdrawn, which was very much later on 13 January 2012. Therefore, the 2nd Acceptance received by the Defendant on 31 August 2011 was valid, notwithstanding the Plaintiff's death on 29 August 2011 and the inapplicability of the postal acceptance rule.

50 The outcome of this issue would depend on whether or not the Defendant's second offer to settle determined upon the death of the Plaintiff. The starting point of the analysis is, once again, to look at the rules at common law relating to the effect of death on offers; and see whether the common law rules have been modified by statute.

51 The common law rules relating to death of an offeree are unfortunately not very well settled. At common law, the death of either the offeror or the offeree may have an effect on the validity of the offer, depending on the nature of the offer. The authors of *The Law of Contract in Singapore* explained at p 121:

(ii) Death

It would appear that death of either the offeror or offeree is another obvious category under which the offer terminates. *However, the relevant rules may not be altogether clear, although it does appear that knowledge is a key element.* Where the offeror passes away, and if the offeree knows of the offeror's death, he will not be allowed to effect a valid acceptance. On the contrary, if the offeree is ignorant of the offeror's death, the legal position would appear to be unclear, with the relevant authorities going both ways. The better view in the last-mentioned situation would appear to be that a valid acceptance is possible, save in those situations where some element of personal service or the like is required on the offeror's part. *If the offeree passes away, it would appear that his personal representatives cannot accept the offer on behalf of the deceased offeree's estate.*

[emphasis added]

52 Whether or not the personal representatives of the estate of the deceased may accept an offer made prior to deceased's death depends on whether the offer to the deceased was a personal one or not. Michael Furmston and G J Tolhurst in *Contract Formation: Law and Practice* (Oxford University Press, 2010) stated at p 32:

As regards the death of the offeree prior to acceptance, on one view, offers are inherently personal and so they cannot be accepted by the estate of the offeree if the offeree dies prior to acceptance. Similarly it has been said that an offer made to a living person ceases to be an offer if that person dies prior to accepting the offer. *However, it would appear that the preferred view is that the nature of an offer depends on construction, it may be personal and it may not.* The

fact that it is possible to make an offer to more than one person proves this point. *It would then follow that a non-personal offer could be accepted by the personal representatives of the offeree.*

[emphasis added; footnotes omitted]

53 I agree with the above view. Whether or not an offer is considered “personal” to the offeree is matter of construction, depending on the facts of each case. The exercise is not a technical one and must be approached with a certain degree of common sense.

54 On the facts of this case, I do not construe the Defendant’s second offer to settle as a personal offer. Section 10 of the Civil Law Act (Cap 43, 1999 Rev Ed), which deals with the effect of death on certain causes of action, states:

Effect of death on certain causes of action

10.—(1) *Subject to this section, on the death of any person, all causes of action subsisting against or vested in him shall survive against, or, as the case may be, for the benefit of his estate.*

...

(3) Where a cause of action survives as specified under subsection (1) for the benefit of the estate of a deceased person, ***the damages recoverable for the benefit of the estate of that person*** —

(a) ***shall not include*** —

(i) any exemplary damages; and

(ii) ***any damages for loss of income in respect of any period after that person’s death*** ;

...

(5) The rights conferred by this section for the benefit of the estates of deceased persons shall be in addition to and not in derogation of any rights conferred on the dependants of deceased persons by section 20 and so much of this section as relates to causes of action against the estates of deceased persons shall apply in relation to causes of action under that section as applies in relation to other causes of action not expressly excepted from the operation of subsection (1).

(6) In the event of the insolvency of an estate against which proceedings are maintainable by virtue of this section, any liability in respect of the cause of action in respect of which the proceedings are maintainable shall be deemed to be a debt provable in the administration of the estate, notwithstanding that it is a demand in the nature of unliquidated damages arising otherwise than by a contract, promise or breach of trust.

[emphasis added in bold italics]

55 Section 10(1) of the Civil Law Act states that all causes of action vested in the deceased shall survive for the benefit of his estate. Causes of action that survive the death of a plaintiff cannot be

considered personal in nature since the action could be continued by the personal representatives of the deceased. If the cause of action cannot be considered personal, I am not persuaded that an offer to settle purporting to settle the surviving cause of action can be considered personal. Since there is nothing in Order 22A to suggest that the statutory regime is intended to be different from the common law in this regard, I accordingly find that the Defendant's second offer to settle was not personal and did not determine upon the death of the Plaintiff on 29 August 2011.

56 The Defendant's counsel argued that this outcome was not in line with the spirit of Order 22A. However, as pointed out by the Plaintiff's counsel (whose arguments on this point I accepted), the Defendant was free to frame its offer to settle on any terms and conditions as it wished. The authors of *The Law of Contract in Singapore* explain at p 118:

(iii) Lapse of time: Where offer contains express or implied term as to lapsing of offer

An offer can also be terminated by lapse of time. There are at least two basic situations. The first ... relates to a situation where *the offer itself contains an express term as to when the offer will lapse*, as happened in the High Court decision of *Dickson Trading (S) Pte Ltd v Transmarco Ltd* [1987] SLR(R) 674. ... It should also be noted, however, that although *the offeror is perfectly entitled to set a cut-off date for its offer*, the offer concerned will still be open for acceptance if the offeror conducts itself in such a manner as to make it clear to the offeree that it is in fact extending the deadline. This was indeed found to be the case in the High Court decision of *Panwell Pte Ltd v Indian Bank* [2001] 3 SLR(R) 462.

[emphasis added]

57 Having not qualified its offer in express terms, the Defendant is now indirectly asking the court to imply a condition that the Defendant's second offer to settle determined upon the death of the Plaintiff. Keeping in mind that the rationale of Order 22A is to encourage settlement rather than prolong it, the court should be extremely slow to imply terms into offers to settle which are otherwise clearly worded and unambiguous, as was in this case. This case serves as a reminder that the more expressly the terms and conditions are stated in an offer to settle, the lesser the need to rely on the doctrine of implied terms. However, as neither counsel had addressed me on the issue of implied terms, I make no findings on this issue; and by implication, the Defendant's second offer to settle stands solely on its express terms.

58 I shall deal with one final argument on this issue. The Defendant's counsel cited the table (see above at [9]) sent together with the Defendant's second offer to settle setting out the breakdown of each component used in arriving at the settlement figure of \$435,000.00. It was argued that the table should be taken into account because it evinced components that would not have applied if the Plaintiff had passed away.

59 Order 22A rule 1 requires all offers to settle to be in Form 33. This formality requirement was not satisfied because the table was sent separately from Form 33, and the Form 33 served on the Plaintiff did not make any reference to the table. Therefore, the table is irrelevant as it did not form part of the Defendant's second offer to settle. In any event, even if the table formed part of the Defendant's second offer to settle, the Plaintiff only had to agree with the final monetary figure and not with each component given in the breakdown. Even if the Plaintiff had disagreed with every component in the table, he could still have validly accepted the Defendant's second offer to settle as long as he agreed with the final sum proposed.

60 In the light of the reasons given above, I find that the Defendant's second offer to settle was

validly accepted by the Plaintiff when the 2nd Acceptance was served on the Defendant on 31 August 2011.

The 3rd Acceptance

61 In the light of my findings above, the issue of the validity of the 3rd Acceptance becomes irrelevant. The Defendant's counsel submitted at length that, whatever the position the law was on the 1st and 2nd Acceptances, the Plaintiff (i) had waived his right; (ii) was estopped; or (iii) was otherwise precluded from making the 3rd Acceptance. However, the validity of all the acceptances made after the Plaintiff's death on 29 August 2011 (*ie* the 2nd and 3rd Acceptances) would turn on whether the Defendant's second offer to settle determined upon the Plaintiff's death. Since I have already found that the offer did not determine upon the Plaintiff's death (see above at [48] to [58]), and that the 2nd Acceptance was valid, I do not need to deal with the 3rd Acceptance separately. Even if the Defendant's counsel had prevailed on the issues he had raised with respect to the 3rd Acceptance, the 2nd Acceptance was still an insurmountable hurdle for him.

Conclusion

62 For the foregoing reasons, I confirm my decision and the orders that I made in chambers on 26 March 2012 stated at [22] above.

[\[note: 1\]](#) See Affidavit of Paul Yap Tai San at [7] and pp 9-11.

[\[note: 2\]](#) See Affidavit of Chua Chean Veen at [10] and [11].

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